

Five Star Interiors, LLC and United Construction Workers, Local 10, affiliated with the Christian Labor Association of the United States of America. Case 7–CA–51218

November 28, 2008

DECISION AND ORDER

BY CHAIRMAN SCHAMBER AND MEMBER LIEBMAN

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and amended charges filed by the Union on April 29, July 2, and August 28, 2008, respectively, the General Counsel issued the complaint on August 29, 2008, against Five Star Interiors, LLC, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On October 2, 2008, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on October 10, 2008, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On October 30, 2008, the Board issued a second Notice to Show Cause, which was sent to the Respondent's address with a corrected zip code. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment¹

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received on or before September 12, 2008, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated September 18, 2008, notified the Respondent that unless an answer was received by September 25, 2008, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Michigan corporation with an office and place of business located at 2677 N. Eastman, Suite 1100, Midland, Michigan, has been engaged in the construction industry as a drywall installation contractor performing work at commercial construction sites.

During calendar year 2007, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$1 million. During the same period, the Respondent purchased goods and materials valued in excess of \$50,000 from Acoustical Services, Inc., which, in turn, purchased such goods and materials from outside the State of Michigan and caused such goods and materials to be shipped directly to Acoustical Services' Michigan facilities.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, United Construction Workers, Local 10, affiliated with the Christian Labor Association of the United States of America, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Patrick Marr has held the position of the Respondent's president and owner and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent, herein called the unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees employed by the Respondent at and out of its place of business located at 2677 N. Eastman, Suite 1100, Midland, Michigan; but excluding all office clerical employees, superintendents, managerial employees, and guards and supervisors as defined in the Act.

Since January 2006, the Union has been the exclusive collective-bargaining representative of the unit and has been recognized as such by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms from January 27, 2008, until January 26, 2009, with an automatic rollover provision.

At all times since January 2006, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

The collective-bargaining agreement referred to above has, at article 3, a clause entitled, "check-off" which states, in relevant part: "The Employer will check off the Union dues of those employees who authorize them to do so through a personally signed authorization to such effect, which shall be subject to cancellation at any time by the individual employee through a personally signed notice to such effect given to the Employer and the Union at least ten (10) days before the authorization is to be voided. Dues shall be checked off from the first pay each month and forwarded to the Union Treasurer within ten (10) days after the deduction is made, together with a list of the employees for who [sic] the deduction has been made."

Since about August 2007,² the Respondent has failed to forward to the Union dues deducted from unit employees' paychecks pursuant to duly executed and unrevoked authorizations by unit employees, in contravention of article 3 of the collective-bargaining agreement, as described above.³

The collective-bargaining agreement referred to above has, at article 13, a clause entitled, "grievance settlement procedure."

About January 4, 2008, the Union filed a grievance under article 13, which:

(a) grieved that the Respondent had not remitted to the Union dues deducted from unit employees' paychecks;

(b) requested that the Respondent furnish the Union with membership cards and dues-checkoff cards executed by unit employees and submitted to the Respondent; and

(c) requested that the Respondent furnish the Union with a monthly listing of unit employees since August 2007.

About March 26, 2008, the Union, by hand-delivered letter, requested that the Respondent furnish it with:

(a) membership cards and dues-checkoff cards executed by unit employees and submitted to the Respondent; and

(b) a monthly listing of unit employees since August 2007.

About April 18, 2008, the Union, by letter, renewed its request of the Respondent for the information described above.

The information requested by the Union, as described above, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since about January 4, 2008, the Respondent has failed and refused to furnish the Union with the information concerning membership cards and dues-checkoff cards.

About August 19, 2008, the Respondent dilatorily provided the Union with information concerning a monthly listing of unit employees since August 2007.

Since about January 4, 2008, the Respondent, by its agent Patrick Marr, has failed and refused to process the grievance filed by the Union as described above.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the unit, in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide the Union with information that is necessary and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees, we shall order the Respondent to furnish the Union with the information it requested in its grievance dated January 4, 2008, and by letters dated March 26 and April 18, 2008. In addition, we shall order the Respondent to cease and desist from unreasonably delaying in furnishing the Union with requested information.

² The complaint states that the failure to forward dues began about July 2008, but the charge and amended charges indicate that the failure to forward dues began in August 2007. As the grievance filed by the Union over the failure to forward dues was dated January 4, 2008, the reference in the complaint to July 2008 appears to be an inadvertent error. Accordingly, the date has been corrected to reflect the August 2007 date alleged in the charge.

³ Although the complaint alleges these facts and requests an affirmative remedy requiring the Respondent to forward unremitted dues to the Union, the complaint does not allege that the Respondent's actions in this paragraph constitute an unfair labor practice. In these circumstances, we cannot find an unfair labor practice or provide a remedy for the Respondent's failure to remit withheld dues to the Union. Accordingly, the General Counsel's Motion for Default Judgment with respect to this issue is denied. Nothing herein precludes the General Counsel from amending the complaint to allege that the Respondent's failure to remit dues violated the Act. In the event that the Respondent again fails to answer, thereby admitting evidence that would permit the Board to find the alleged violation, the General Counsel may renew the Motion for Default Judgment with respect to the amended complaint allegations.

Further, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to process the Union's grievance in accordance with article 13 of the collective-bargaining agreement, we shall order the Respondent to process the grievance as required by the agreement.

ORDER

The National Labor Relations Board orders that the Respondent, Five Star Interiors, LLC, Midland, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to provide United Construction Workers, Local 10, affiliated with the Christian Labor Association of the United States of America, the Union, with information that is necessary and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.

(b) Unreasonably delaying in providing the Union with information that is relevant and necessary to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.

(c) Failing and refusing to process the January 4, 2008 grievance filed by the Union as required in article 13 of the parties' 2008–2009 collective-bargaining agreement.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Timely provide the Union with the information it requested in its grievance dated January 4, 2008, and in its letters dated March 26 and April 18, 2008.

(b) Process the January 4, 2008 grievance filed by the Union as required in article 13 of the parties' 2008–2009 collective-bargaining agreement.

(c) Within 14 days after service by the Region, post at its facility in Midland, Michigan, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Re-

spondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 2007.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to provide United Construction Workers, Local 10, affiliated with the Christian Labor Association of the United States of America, the Union, with information that is necessary and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT unreasonably delay in providing the Union with information that is relevant and necessary to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT fail and refuse to process the January 4, 2008 grievance filed by the Union as required in article 13 of the 2008–2009 collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL timely provide the Union with the information requested in the January 4, 2008 grievance filed by the Union and in its letters dated March 26 and April 18, 2008.

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL process the Union's January 4, 2008 grievance, as required in article 13 of the 2008–2009 collective-bargaining agreement.

FIVE STAR INTERIORS, LLC